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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,353	01/14/2002	Mehran Arbab	1376P1	5572

7590 04/08/2004

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EXAMINER

BOLDEN, ELIZABETH A

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,353

Applicant(s)

ARBAB ET AL.

Examiner

Elizabeth A. Bolden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) 36-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-29, 31-35 and 40-44 is/are rejected.
- 7) ☒ Claim(s) 18, 30, 40, & 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Any rejections and or objections, made in the previous Office Action, and not repeated below, are hereby withdrawn.

Claim Objections

Claim 40 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 40 does not further limit the colorant portion of the glass composition.

Applicant is advised that should claim 20 be found allowable, claim 42 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-17, 19-29, 31-35, and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casariego et al., U.S. Patent 5,582,455.

Casariego et al. teach a soda lime silica glass having overlapping ranges with instant claims 1-17, 19-29, 31-35, and 40-44. See Abstract and column 1, line 60 to column 2, line 6. Casariego et al. further disclose optical properties for the glass composition that overlap the instant claims. See Abstract, column 2, lines 8-12, 23-25, and 35-37. Casariego et al. teach that the glasses are made by the float process. See column 2, lines 18-22. Casariego et al. teach that the glasses are used for automotive glazings. See column 4, lines 21-23. Casariego et al. teach that the glasses are of neutral colorations that vary from blue/green to green/yellow. See column 2, lines 33-37.

Casariego et al. fail to teach any examples or compositional ranges that are sufficiently specific to anticipate the compositional limitations of claims 1-17, 19-29, 31-35, and 40-44. However, overlapping ranges have been held to establish prima facie obviousness. See MPEP 2144.05.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected from the overlapping portion of the ranges disclosed by the reference because overlapping ranges have been held to establish prima facie obviousness. See MPEP 2144.05.

One of ordinary skill in the art would expect that a glass with overlapping compositional ranges would have the properties recited in claims 16, 19, 29, 30, 31, and 34.

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Response to Arguments

Applicant's arguments, see pages 9-13 and 16-20, filed 8 January 2004, with respect to claims 1-35, 40, and 41 in view of Higby, Boulos, and Grabe have been fully considered and are persuasive. The rejection of claims 1-35, 40, and 41 in view of Higby, Boulos, and Graber have been withdrawn.

Applicants argue that Casariego et al., US 5,582,455, teach that glasses a concentration of Cr_2O_3 from 0.025 to 0.09 wt. %, while the instant invention does not include Cr_2O_3 . This is deemed not persuasive since Casariego et al. disclose that the glasses contains from 0-0.1 wt % Cr_2O_3 . See column 2, lines 2-7. Additionally, Applicant argues that Casariego et al. does not anticipate independent claims 1, 23, and 34 since Cr_2O_3 is a required element and instant claims 1, 23, and 34 recite the colorant portion of the claim with the transitional phrase "consisting essentially of".

MPEP 2111.03 states:

The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention.... For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." ...If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. MPEP2111.03

In view of MPEP 2111.03, Applicant's argument is deemed not persuasive. There is nothing of record to suggest that the addition of Cr_2O_3 to the present invention would materially

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affect the novel or basic characteristics of the present invention. Accordingly the "consisting essentially of" claim language does not exclude Cr_2O_3 from the claims. Furthermore, Applicants instant claims 41 and 43 allow for the presence of Cr_2O_3 in amounts up to 10 ppm.

Allowable Subject Matter

Claims 18 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

In reviewing the prior art for these claims, the further restriction of requiring the addition of the recited total solar ultraviolet transmittance, total solar infrared transmittance, total solar energy transmittance, dominant wavelength, and excitation purity as recited in claims 18 and 30 renders these claims allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Bolden whose telephone number is 571-272-1363. The examiner can normally be reached on 9:30 am-7:00 pm with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EAB
2 April 2004



Mark L. Bell
Supervisory Patent Examiner
Technology Center 1700